IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: **JUDGMENT** ::

Jahid Ahmed Vs. Firoja Bi & Ors.

S.B. CIVIL MISC. APPEAL NO.121/1995.

Against the award dated 21.03.1994 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case No.50/1992.

Date of Judgment :: 22nd May 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sanjeev Sharma, for the appellant.
Mr. Mahendra Trivedi, for the respondents.

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BY THE COURT:

This appeal has been preferred against the award dated 21.03.1994 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case No.50/1992 whereby the Tribunal has awarded compensation to the wife and children of the vehicular accident victim Maksood Ahmed (28 years) in the sum of Rs.2,07,000/- with interest @ 12% per annum from the date of filing of the claim application; and has held the appellant responsible for the occurrence and thus liable towards compensation.

The accident in question occurred on 08.07.1991 when a motorcycle bearing registration No. DEW 9602 proceeding on Talwara-Tripura Sundari road fell into a *Nala* near Badlia village; the victim Maksood Ahmed, admittedly riding the said motorcycle, sustained grievous injuries and perished. The claimants, wife and three minor children of the deceased Maksood Ahmed, made the claim for compensation against the non-applicant (appellant) Jahid Ahmed stating him to be the owner and driver of the aforesaid motorcycle DEW 9602. Narrating the incident, the claimants asserted that the deceased Maksood Ahmed had accompanied the non-applicant Jahid Ahmed for electricity related work at Tripura Sundari mines; that the non-applicant Jahid Ahmed caused the accident by rash and negligent driving of the said motorcycle that plunged into the *Nala*; and that Maksood Ahmed, a pillion-rider on the motorcycle, died on the spot. The claimants submitted for quantification of compensation that the deceased was 28 years of age, was working as an electrician earning about Rs.2,000/- per month and was the only bread-earner of the family.

The non-applicant put the claim to contest. Though the occurrence involving the said motorcycle DEW 9602 was not denied, but the non-applicant asserted that the vehicle was being driven at the time of accident by the deceased Maksood

Ahmed himself and the non-applicant was one of the pillion-riders of the motorcycle who sustained grievous injuries in the accident and had to undergo long drawn treatment at Banswara and Ahmedabad and was not in a position to speak for about three months. The non-applicant denied his being the owner of the vehicle in question and submitted that the claimants have unnecessarily made the claim against him only in order to harass and pressurise. The non-applicant further asserted that the accident occurred only for rash and negligent driving of Maksood Ahmed and the non-applicant himself was unable to lodge any claim for compensation for want of knowledge about the owner of the said vehicle; and that he was seriously injured and spent a lot on treatment.

The Tribunal framed the following issues for determination of the questions involved in this case:-

> "1. आया दिनांक 8.7.91 को श्री मकसूद एहमद की मृत्यु विपक्षी सं0 एक श्री जाहिद एहमद के द्वारा वाहन नम्बर मोटर साइकिल नं0 DIW 9602 को गफलत व लापरवाही से चलाने के कारण हुई ?
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> 2. आया प्रार्थीगण क्लेम में बताई गयी राशि रू0 10,86,000/- या अन्य कोई राशि विपक्षीगण से पाने के अधिकारी है ? यदि हां तो कितनी व किस किस से ?

3. क्या अप्रार्थीगण जवाब में वर्णित तथ्यों के अनुसार उक्त क्लेम की राशि अदायगी हेतु उत्तरदायी नहीं है ?

4. दादरसी"

In evidence, the claimants examined Firoja Bi, wife of the deceased Maksood Ahmed as PW-1 and Sabir son of Sayeed Ahmed, resident of Banswara, an alleged eyewitness to the accident, as PW-2. The claimants also produced documentary evidence in the form of certified copies of First Information Report dated 08.07.1991 as Ex.1, postmortem report as Ex.2, site inspection memo as Ex.3, charge sheet filed against the non-applicant as Ex.4, seizure memo of the motorcycle as Ex.5 and statements of Raman Lal son of Champaji Lohar under Section 161 Cr.P.C. as Ex.6. The non-applicant Jahid Ahmed, on the other hand, examined himself as DW-1 and the said Raman Lal son of Champ Lal, another occupant of the motorcycle at the time of accident, as DW-2.

The Tribunal referred to the material placed on record and found that, admittedly, at the time of accident the witness Raman Lal and so also the non-applicant Jahid Ahmed were riding the motorcycle and were injured in the same accident. The Tribunal noticed the assertion on the part of the non-applicant and his witness that the deceased Maksood Ahmed was driving the motorcycle and they were sitting behind. DW-2

Raman Lal asserted in his statement before the Tribunal that the deceased Maksood Ahmed was driving the motorcycle but in his police statement (Ex.6), had stated the non-applicant Jahid Ahmed to be the driver of the motorcycle and for such contradiction, the Tribunal found this witness Raman Lal unreliable. The Tribunal also rejected the testimony of the non-applicant Jahid Ahmed for the reason that he was trying to avoid his liability.

The Tribunal, then, proceeded to believe the testimony of PW-2 Sabir, being that of an independent witness and not related to the claimants, who asserted having crossed the motorcycle in question just before the incident and having seen the non-applicant Jahid Ahmed driving the same. The Tribunal noticed that the said witness has clarified the reason of his not making any report that FIR relating to the incident had already been lodged at the police station. The Tribunal also noticed the fact that a police constable who was an independent person lodged the FIR and stated after inquiring from the persons available at the site that Jahid Ahmed was driving the vehicle.

The Tribunal, therefore, found the evidence of the claimants more reliable and found proved the fact that the accident occurred for rash and negligent driving of the motorcycle by the non-applicant. In issue No.3, of course, the Tribunal noticed the fact that no evidence was available to show

as to who was the owner of the vehicle in question and its registration certificate was not produced on record; but observed that the vehicle driver was primarily responsible for the accident and hence, it made no difference if the non-applicant was not the owner of the vehicle in question.

On quantification of compensation in issue No.2, the Tribunal referred to the admitted position that the deceased Maksood Ahmed was working as an electrician and put an estimate on his income at about Rs.1,500-1,600/- per month and deducting one-third wherefrom, took loss of dependency of the claimants at Rs.1,000/- per month leading to a multiplicand of Rs.12,000/- per annum; and with application of multiplier of 15, assessed pecuniary loss at Rs.1,80,000/-. The Tribunal further allowed Rs.2,000/- towards funeral expenses, Rs.10,000/- to the wife of deceased towards loss of consortium, and Rs.5,000/- to each of the three children towards loss of love, affection and guidance of their father; and in this manner held them entitled for compensation in the sum of Rs. 2,07,000/-. The Tribunal allowed interest @ 12% per annum from the date of filing of the claim application and Rs.1,000/- towards costs of litigation.

Assailing the award aforesaid, learned counsel for the appellant vehemently contended that the Tribunal has taken an entirely erroneous view of the matter while making the award

against the appellant for there is no reason to discard the testimony of independent witness DW-2 Raman Lal, who was admittedly riding the said motorcycle at the time of accident and who has categorically supported the statement of the appellant that the motorcycle was being driven by the deceased Maksood Ahmed only. Learned counsel argued that PW-2 Sabir is totally an unworthy witness whose name does not figure in FIR and the Tribunal has been in error in believing him. With reference to a certified copy of the statement of Sabir son of Sale Khan as recorded under Section 161 Cr.P.C., learned counsel commented that the accident occurred on 08.07.1991 and no reason has been assigned for recording his statement much later on 27.07.1991; and contended that there is a clear discrepancy about the identity of Sabir Ahmed examined by the Police and PW-2 Sabir Ahmed who has deposed in this claim case. Learned counsel further contended that the manner of lodging of FIR is itself seriously questionable inasmuch as the FIR was lodged at a Police Station 16 kms. away from the scene of accident; though the said first informant constable was posted at out-post Talwara which was very near the scene of occurrence.

Per contra, learned counsel for the respondents submitted that the Tribunal has arrived at the finding on responsibility towards the accident after proper appreciation of

evidence and the award in question calls for no interference. Learned counsel submitted that the contention questioning the identity of Sabir is totally baseless for no such aspect has been put in his cross-examination and the Tribunal has not committed any error in relying upon the testimony of the said witness. Learned counsel further submitted that an independent police constable has lodged the FIR at the concerned Police Station within whose jurisdiction the accident occurred and the doubts raised against the same are entirely baseless.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is clearly of opinion that this appeal remains bereft of substance and deserves to be dismissed.

The fact that the accident did occur from and out of the use of the said motorcycle; the fact that Maksood Ahmed died due to the said accident; the fact that the non-applicant Jahid Ahmed was also riding the said motorcycle at the time of accident; and the fact that Raman Lal was also riding the same motorcycle at the time of accident are not in dispute.

In the FIR (Ex.1) lodged by Chandra Veer Singh, a constable stationed at the out-post Talwara it has been stated that he was on VIP duty at the concerned post; that at about 4:00 p.m. certain people raised the cry that a motorcycle met with an accident near Badlia village; that he reached the site

taking ride on the vehicles passing-by and found that alongwith the motorcycle, its riders were lying in the canal and were bleeding; that Raman Lal and Jahid Ahmed were shouting (for help) and gave their address; that Maksood Ahmed had died on the spot; that Raman Lal and Jahid Ahmed were admitted at Talwara hospital; that the accident occurred for rash and negligent driving by Jahid Ahmed while going from Banswara to Tripura Sundari mines and being unable to negotiate a turn properly; and that the canal was not flowing. The contention raised by learned counsel for the appellant on the lodging of FIR at a police station 16 kilometers away from the scene of accident is neither of any effect nor of any relevance. It is apparent that the said first informant constable lodged the report at the concerned police station within whose jurisdiction the incident occurred in bonafide discharge of his duties. There appears no reason to discredit the version relating to the occurrence as stated in the FIR. However, it remains a fact that the said first informant was not the eyewitness to the accident and he had stated the fact regarding driving of the vehicle by Jahid Ahmed only on the basis of the information gathered at the site. The investigating agency had filed charge sheet against the non-applicant Jahid Ahmed for offences under Sections 279, 337, 304 IPC and 3/181 of the Motor Vehicles Act and it had appeared in investigation that he (the non-applicant) was driving

the vehicle at the time of accident.

The fact that Raman Lal was also one of the occupants of the vehicle is not in dispute; and a copy of his statements recorded under Section 161 Cr.P.C. (Ex.6) suggests that he stated driving of the vehicle by Jahid Ahmed. However, he asserted such driving by the deceased Maksood Ahmed before the Tribunal. In view of such contradiction, obviously, the Tribunal could not have accepted his testimony without proper corroboration; and there appears no error of appreciation of evidence if the Tribunal has not considered it safe to rely upon his testimony.

In the circumstances of the case, the testimony of independent witness PW-2 Sabir Ahmed assumes importance and relevance. Learned counsel for the appellant has raised the question about identity of PW-2 Sabir Ahmed and has referred to certified copy of statement of Sabir Ahmed under Section 161 Cr.P.C. However, a close look at the record brings about a scenario different. It may be pointed out that the statements of Sabir Ahmed under Section 161 Cr.P.C. as sought to be referred in this appeal were not produced by the appellant nor were exhibited in evidence before the Tribunal. Record of the Tribunal shows that the claimants' witness PW-2 Sabir was examined on 05.06.1993. Then, the non-applicant and his witness Raman Lal were examined on 27.08.1993 but

cross-examination of DW-2 Raman Lal on behalf of the claimants was deferred. Thereafter, the claimants filed two certified copies of statements under Section 161 Cr.P.C., one that of Sabir and another that of Raman Lal, both recorded on 27.07.1991. The statement of Raman Lal was, of course, exhibited in evidence on the part of the claimants as Ex.6 inasmuch as Raman Lal was specifically confronted with his police statements particularly with the portion marked 'A to B' wherein he had stated that the motorcycle was being driven by Munshi Jahid Ahmed (the appellant). Statement of Sabir Ahmed that has been sought to be referred in this appeal though was available before the Tribunal but was never exhibited in evidence nor PW-2 Sabir was sought to be confronted with the same nor any question about his identity was raised in his cross-examination. Yet, for further appreciation of facts, when the said unexhibited statement under Section 161 Cr.P.C. is looked at, it is clear that the said one is NOT the statement of the claimants' witness PW-2 Sabir. The said statement under Section 161 Cr.P.C. is of one Sabir Ahmed son of Sale Khan, aged 31 years, resident of Kali Kalyan, District Banswara and, according to its contents, the said Sabir Ahmed was travelling in a bus of Rajasthan State Road Transport Corporation going from Partapur to Banswara; that he saw the three persons going on the said motorcycle that was being driven by Jahid Ahmed;

that Maksood Ahmed waived towards him; and that he heard about the accident at 8:00 p.m. upon reaching Banswara. On the other hand, the claimants' witness PW-2 Sabir Ahmed son of Sayeed Ahmed, aged 28 years, resident of Banswara has stated that he was coming on Vicky from Tripura Sundari to Banswara and the motorcycle crossed him about 100 metres before the incident; and that the motorcycle was being driven by Jahid Ahmed who was known to him being resident of the same locality. A look at his cross-examination makes it clear that the fact asserted by him that Jahid Ahmed was known to him being resident of same locality has not been put to challenge; and he has pointed out that Jahid Ahmed was also injured and remained bed-ridden for about 5-6 months. It is clear that the claimants' witness PW-2 Sabir son of Sayeed Ahmed is not the same person whose statement under Section 161 Cr.P.C. is sought to be referred by the appellant, and who was Sabir Ahmed son of Sale Khan. The appellant has unnecessarily sought to confuse the issue by filing a copy of such irrelevant statement with this appeal without the said document having been tendered in evidence before the Tribunal and without even moving proper application for taking the same on record. The submissions on the identity of Sabir are also, therefore, fundamentally baseless.

So far the probative value of the statement of PW-2 Sabir is concerned, this Court is of opinion that he cannot be dubbed as an untruthful witness even if his statements were not recorded in police investigation. He has categorically deposed that the vehicle was being driven by Jahid Ahmed with the deceased Maksood being the pillion rider; and there is nothing in his cross-examination that could discredit his testimony.

Then, as already noticed, there is no reason not to accept the version of the incident as stated in the first information report lodged by an independent police constable immediately after the incident. Yet further, the investigating agency has also filed charge sheet against the appellant, finding him to be the driver of the vehicle at the time of accident.

In the overall facts and circumstances of the case and in the preponderance of evidence, the view taken by the Tribunal that the appellant Jahid Ahmed was driving the vehicle in question remains a reasonably possible view of the matter; and there is no such direct and convincing material on record that could displace the finding reached by the Tribunal.

It may be pointed out that in this case the ownership of the motorcycle in question has remained in obscurity. It is not divulged by any witness as to who was the owner of the vehicle in question nor the material on record including the police investigation papers carry even an indication about its

ownership. However, as already noticed and affirmed, the appellant remains liable towards the accident as driver of the said vehicle. Once it is clear that the appellant was driving the vehicle at the time of accident, the onus is heavy upon him to show if anybody else was liable as owner; and he has totally failed to establish ownership of the vehicle with anyone else. The appellant remains liable as driver of the vehicle in question and so also as the person in possession and use of the vehicle, answering to the description of 'owner' for the present purpose.

Upshot of the discussion aforesaid is that there is no reason to interfere with the award in question; and this appeal remains bereft of substance.

The appeal fails and is, therefore, dismissed with costs.

(DINESH MAHESHWARI), J.

Mohan